NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

I.W.G., Inc., d/b/a AAA Fire Sprinkler, Inc.; Con-Bru, Inc., d/b/a AAA Fire Sprinkler, Inc.; Robert B. Gordon; Arlene, Inc., d/b/a AAA Fire Supression, Inc. and Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO. Cases 27–CA-11771 and 27–CA-11870

November 23, 2001

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND WALSH

The National Labor Relations Board's original Decision and Order in this case issued on August 27, 1996. The Board's August 27, 1996 Decision and Order directed I.W.G., Inc., d/b/a AAA Fire Sprinkler, Inc. (Respondent I.W.G.), Con-Bru, Inc., d/b/a AAA Fire Sprinkler, Inc. (Respondent Con-Bru), and Arlene, Inc., d/b/a AAA Fire Suppression, Inc. (Respondent Arlene), their officers, agents, successors, and assigns, and Robert B. Gordon (Respondent Gordon), an individual, his agents, successors, and assigns, jointly and severally to take certain affirmative actions, including: (1) making whole all former I.W.G., Con-Bru, and Arlene employees for any loss of earnings and other benefits suffered as a result of the Respondents' unfair labor practices in violation of Section 8(a)(3) and (5) of the National Labor Relations Act; (2) making all delinquent contributions to employee benefit funds, including any additional amounts due the funds; and (3) mailing copies of the notice attached to the Board's Order to the Union and the last known address of all former employees.

On April 10, 2000, the U.S. Court of Appeals for the Tenth Circuit entered its judgment enforcing the Board's Order.²

A controversy having arisen over the amount of backpay due discriminatees and on other compliance matters, on April 11, 2001, the Regional Director for Region 27 issued an amended compliance specification and notice of hearing alleging the amounts due under the Board's Order, and notifying the Respondents that they should file a timely answer complying with the Board's Rules and Regulations. Although properly served with copies of the amended compliance specification, none of the Respondents filed an answer.³

On September 10, 2001, the General Counsel filed with the Board a Motion to Transfer Case to the Board and for Summary Judgment, with exhibits attached. On September 17, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents again filed no response. The allegations in the motion and in the amended compliance specification are therefore undisputed.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondents, despite having been advised of the filing equirements, have failed to file an answer to the amended compliance specification. In the absence of good cause for the Respondents' failure to file an answer, we deem the allegations in the amended compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees and the benefit funds is as stated in the amended compliance specification, and

¹ 322 NLRB 69. On May 18, 1998, the United States Court of Appeals for the Tenth Circuit issued a decision in which it enforced in part and denied enforcement in part of the Board's decision, and remanded the case to the Board for further proceedings. 144 F.3d 685. On February 12, 1999, the Board issued an unpublished Order remanding the proceeding to the administrative law judge for further hearing. Thereafter, on July 9, 1999, the administrative law judge issued a Supplemental Decision recommending that the Board's Order of August 27, 1996, be sustained and affirmed. No exceptions were filed to the judge's decision, and on August 25, 1999, the Board sustained and affirmed its earlier Decision and Order.

² No. 00–9509.

Respondent Arlene informed the General Counsel that the amended compliance specification had been received and that no answer would be filed on its behalf. The return receipt from Respondent Con-Bru indicates that Respondent Con-Bru received the amended compliance specification. Copies of the amended compliance specification served on Respondent I.W.G. at a post office address by certified and regular mail were returned to the Regional Office by the United States Postal Service marked "Box Closed-Unable to Forward-Return to Sender," but the copies served on Respondent I.W.G. at a street address by certified and regular mail have not been returned, although the return receipt for the certified mailing has not been received. Copies of the amended compliance specification served on Respondent Gordon at his last known addresses by certified and regular mail were returned to the Regional Office by the United States Postal Service. Respondent Gordon's and Respondent I.W.G.'s failure to provide for receiving appropriate service cannot defeat the purposes of the Act. See, e.g., National Automatic Sprinklers, 307 NLRB 481 fn. 1 (1992). In addition, the fact that certain Respondents may no longer be in business does not constitute good cause for their failure to file an answer and is not a basis for denying the Motion for Summary Judgment. See, e.g., Beaumont Glass Co., 316 NLRB 35 fn. 1 (1995).

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we will order payment by the Respondents of said amounts to the discriminatees and funds, plus interest accrued on said amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondents, I.W.G., Inc., d/b/a AAA Fire Sprinkler, Inc., Con-Bru, Inc., d/b/a AAA Fire Sprinkler, Inc., and Arlene, Inc., d/b/a AAA Fire Suppression, Inc., their officers, agents, successors, and assigns, and Respondent Robert B. Gordon, an individual, his agents, successors, and assigns, shall, jointly and severally, make whole the individuals and funds as set forth in Appendix No. 37 in the amended compliance specification, by paying them the amounts following their names, with interest on the backpay owed as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987), and any additional amounts accruing on the fund contributions as prescribed in Merryweather Optical Co., 240 NLRB 1213 (1979), minus tax withholdings on the backpay due the individuals as required by Federal and State laws:

Daniel Anderson	\$ 10,892
John Arguello	\$ 18,917
Donald Blair	\$ 21,240
Gary Blair	\$ 12,226
Robert Clark, Jr.	\$ 11,029
William Collins	\$ 44,778
Terry Cooper	\$ 30,593
Paul Crowley	\$ 8,337
John Elliott	\$ 171
Michael Flis	\$ 4,825
Darrell Grieser	\$ 5,887
Troy Hartman	\$ 8,826
Mike Hernandez	\$ 2,179
Dean Highland	\$ 10,828
Richard Hudson	\$ 1,956
Justin Jones	\$ 16,291
William Kolb	\$ 9,456
Duane Kopp	\$ 47,423
Kory Koralewski	\$ 5,732
Ken Levosky	\$ 28,227
Tim Martinez	\$ 17,506
Ronnie Metter	\$ 12,800
Thomas Monroe	\$ 4,953

Todd Morton Kent Pierceall Jeffrey Schleusner William Stanek Gerald Urquidez Rick Vancenbrock Benjamin Wildeman	\$ 17,374 \$ 27,759 \$ 40,765 \$ 19,303 \$ 14,284 \$ 831 \$ 27,534	
TOTAL BACKPAY:	\$482,923	
National Automatic Sprinkler Industry Welfare Fund	\$179,388	
National Automatic Sprinkler Industry Pension Fund	\$119,704	
NASI–Local 669 Industry Education Fund	\$ 10,777	
Sprinkler Industry Supple- mental Defined Contribution Pension Fund	\$ 28,802	
TOTAL FUND PAYMENTS:	\$338,671	
GRAND TOTAL:	\$821,594 ⁴	
Dated, Washington, D.C., November 23, 2001		

Peter J. Hurtgen,	Chairman
Wilma B. Liebman,	Member
Dennis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁴ Without delving into the underlying amounts and calculations set forth in the 37 appendices to the amended compliance specification, we have amended the amounts set forth in the summary in appendix 37 to accurately reflect the following numbers: The sum of the backpay owed is \$482,923, not \$482,924, and the grand total owed is \$821,594, not \$821,593. These minor errors do not provide a basis on which to deny the General Counsel's uncontested Motion for Summary Judgment.